



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Kellett Corporation

File: B-229493

Date: March 1, 1988

DIGEST

General Accounting Office will not object to agency's decision to limit competition to approved manufacturers where agency's requirements are urgent and the agency does not have the technical data package needed to conduct a competitive procurement.

DECISION

Kellett Corporation protests award of a contract to Ward Manufacturing Company, Inc., under request for proposals (RFP) No. N00383-87-R-4755, issued by the Department of the Navy's Aviation Supply Office, Philadelphia, Pennsylvania, for mobility carts. The mobility cart is used to transport for repair the main rotor head assembly and/or main gear box assembly of the CH/MH-53E helicopter designed and manufactured by the Sikorsky Aircraft Division of United Technologies Corporation. Kellett contends that it was unfairly precluded from an opportunity to compete for carts which it was technically capable of furnishing.

We deny the protest in part and dismiss it in part.

The Navy reports that it did not have in its possession complete technical data to allow purchase of the cart from other than two current sources: Sikorsky, the original manufacturer of and design control activity for the cart, and Ward, a prior manufacturer of the item. The Navy synopsisized the requirement in the Commerce Business Daily (CBD) on May 11, 1987. The synopsis indicated that RFPs were issued to Sikorsky and Ward, and referenced notes 40 and 73 of the CBD. Note 40 indicated that additional proposals were not solicited and synopsis was for the benefit of prospective subcontractors. Note 73 stated that specifications, plans or drawings relating to the procurement were not available and could not be furnished by the government.

041453/135190

By the RFP's June 24, 1987 closing date, the Navy received proposals from Ward, Kellett and Salsco, Inc. By memorandum dated August 31, requirements personnel requested that contract award be expedited because the material was urgently required. The Navy rejected Kellett and Salsco as sources because, among other reasons, it could not provide a complete data package with unlimited rights. Notice of award to Ward, a prior manufacturer of the item, was executed on September 18 for 93 mobility carts at a unit price of \$18,953.54.

Kellett protests that the government could save approximately \$308,000 by accepting Kellett's lower-priced proposal. Kellett notes that it has successfully manufactured a long list of ground support items over the years and argues that the Navy should have delayed the procurement until the limited rights legends could be challenged and a complete technical data package could be compiled. According to Kellett, the Navy has a double standard in qualifying corporations because it approved Smith and Smith Aircraft Company under another solicitation for a part on which Kellett was listed as an approved source, even though the other solicitation contained the same clause as here advising of the nonavailability of drawings.

As a threshold issue, the Navy argues that this is an untimely protest of an alleged solicitation defect. The Navy notes that the May 11 CBD notice listed the Sikorsky part number for the mobility cart, identified Sikorsky and Ward as the sources being solicited, and indicated that drawings, specifications or plans were not available and could not be furnished by the government. Furthermore, states the Navy, the RFP listed the Sikorsky part number and clearly stated that drawings were not available and could not be provided by the government. Thus, argues the Navy, Kellett's protest is a protest against an alleged solicitation defect and should have been filed prior to the June 24 closing date for receipt of proposals.

We disagree. Our Regulations requiring that protests of alleged solicitation improprieties be filed prior to the closing date for receipt of initial proposals concern improprieties which are apparent prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1987). We do not believe Kellett's protest involves an apparent solicitation impropriety. Although the CBD notice stated that additional proposals were not being solicited, Kellett was furnished a copy of the RFP. The protest record also indicates that Kellett had acquired, during an earlier procurement, drawings (which the Navy later found to be outdated) for the carts, and so did not have reason to be concerned by the RFP's warning that the government would not provide them. Thus, Kellett did

not have reason to object to its exclusion as a listed source until it received a letter from the Navy, sent on September 24, after contract award, which informed Kellett that its proposal could not be accepted because the Navy could not provide a complete data package. Kellett received the letter on September 30 and protested to the Navy on October 1. Kellett then timely protested to our Office on October 27, after having read the October 21 CBD notice of award to another vendor and having not yet received a response to its protest from the Navy. We therefore will consider Kellett's protest.

Generally, where adequate data is not available to an agency to enable it to conduct a competitive procurement within the necessary timeframe, we will not take exception to awards to the only firms that the agency believes are capable of producing the item. See Microcom Corp., B-218296, July 3, 1985, 85-2 CPD ¶ 23; Pacific Sky Supply, Inc., B-227113, Aug. 24, 1987, 87-2 CPD ¶ 198. Here, we do not find the Navy's consideration for award of its current sources for the carts, Sikorsky and Ward, legally objectionable, in view of the Navy's lack of available data. According to the Navy, drawings in its possession, and those possessed by Kellett, did not contain design changes represented by nine engineering orders and five engineering change notices generated over the last 2 years. At the time of this procurement, Sikorsky had not yet revised its drawings to incorporate these design changes. The technical data package was also deficient, reports the Navy, because the drawing for the running gear was a source control drawing for which no source was identified; the data package did not contain qualification test procedures, and key drawings for the mobility cart contained a limited rights legend placed by Sikorsky. (A Sikorsky letter advising that the legends could be ignored, canceled or otherwise obliterated was not received by the Navy until after award.) The revised drawings were received by the Navy on January 21, 1988.

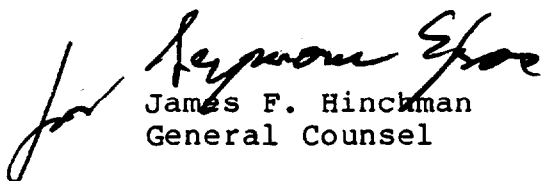
With respect to the urgent need for the carts, the reason the procurement could not be delayed for possible qualification of Kellett, the Navy reports that more than 50 percent of helicopter squadrons and sites lack their authorized number of carts or have no carts. There are no spare carts available to replace broken carts needing repair. Moreover, since the CH/MH 53E helicopter is currently in production, the number of helicopters at various sites is increasing. Consequently, states the Navy, squadrons have been forced to borrow or do without carts, causing substantial repair delays.

Though we do not object to the award, we anticipate that the Navy will expeditiously develop the technical data package for the carts so that future procurements can be conducted with more qualified sources. The Navy reports that, in keeping with the competition mandate of the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(c)(2) (Supp. III 1985), it has acquired, under the contract with Ward, only the minimum number of carts needed during the production lead time and does not plan to exercise the 100 percent option provided for in the contract.

As for Kellett's allegation that based on the Navy's actions on a prior procurement, the Navy has a double standard for qualifying corporations, the Navy reports that the prior procurement involved a different part, different qualification and approval requirements, and different circumstances under which the acquisition proceeded. Each procurement action is a separate transaction, and the action taken under one is not relevant to the propriety of the action taken under another for purposes of a bid protest. See Ferrite Engineering Labs, B-222972, July 28, 1986, 86-2 CPD 122.

In its comments on the agency report, Kellett argues for the first time that the Navy had ample time to qualify it prior to award under the present RFP because the Navy was aware of Kellett's interest in manufacturing the carts since June 1986. As we noted above, the Navy did not possess current drawings which contain qualification test procedures, among other items, to permit the qualification of new sources. Accordingly, the amount of time available to the Navy from 1986, when Kellett expressed an interest, is irrelevant since it did not have the information necessary to qualify new sources.

The protest is denied.


James F. Hinckman
General Counsel